IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

WP(C).No. 27422 of 2007(M)

PETITIONERS:

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1. **SOORYAKKUTTAN ELAYIDOM,**
   S/O.RAMA PANICKER, MANOJ VIHAR,
   PERINGAZHA KARA, H.M.T.COLONY P.O.
   KALAMASSERY.

2. **MURALEEDHARAN ELAYIDOM,**
   S/O.RAMA PANICKER, VALAVAKKATTU HOUSE,
   THENGODU P.O., KOCHI - 682 030.

3. **MOHANAN ELAYIDOM, S/O.RAMA PANICKER,**
   VALVAKKATTU HOUSE, THENGODU P.O.
   KOCHI 682 030.

BY ADV. SRI.K.P.SREEKUMAR

RESPONDENTS:

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1. **V.K.GOPINATHAN ELAYIDOM,**
   S/O.RAMA PANICKER, VALAVAKKATTU HOUSE,
   SMITHA BHAVAN, THENGODU P.O., KOCHI - 682 030.

2. **V.R.JALAJAMANI KUNHAMMA,**
   D/O.RAMA PANICKER, HOUSE WIFE,
   RESIDING AT PRAVI SADAN,
   PERANDOOR ROAD, EDAPPALLY P.O.

3. **V.R.RAMANI KUNHAMMA, D/O.RAMA PANICKER,**
   HOUSE WIFE, RESIDING AT 'RAMANEEYAM',
   THIRUMARADI P.O., KUTHATTUKULAM.

4. **V.R.LALITHAMANI KUNHAMMA,**
   D/O.RAMA PANICKER, HOUSE WIFE,
   RESIDING AT ATHIPPILLIL HOUSE,
   KUTHUKUZHI PO., KOTHAMANGALAM.

5. PUSHPAKUMARI KUNHAMMA,
D/O.RAMA PANICKER, HOMOEO DOCTOR,
VALAVAKKATTU HOUSE, PUTHIYA ROAD,
VADACODE P.O.

6. CHANDRASEKHARAN ELAYIDOM,
S/O.RAMA PANICKER, VALAVAKKATTU HOUSE,
THENGODU P.O. KAKKANADU VILLAGE,
KOCHI - 682 030.

7. SASIDHARAN ELAYIDOM, S/O.RAMA PANICKER,
VALAVAKKATTU BHAVANAM, THENGODU P.O.
KOCHI - 30.

8. SUDHAKARAN ELAYIDOM,
S/O.RAMA PANICKER,
VALAVAKKATTU HOUSE,
THENGODU P.O., KOCHI - 30.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 27422 OF 2007

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Dated this the 5th day of October, 2007.

J U D G M E N T

This writ petition is filed with a prayer to quash all proceedings in O.S.547/07 on the file of the Subordinate Judge, Ernakulam. A perusal of the plaint which is produced as Ext.P7 would show that the suit is filed for a declaration to the effect that the document No.3210/06 dated 26.9.06 of SRO, Thrikkakara is null and void and for other consequential reliefs like setting aside the document for partition etc. The writ petition is filed stating that this is a clear abuse of process of Court and the matter has been concluded by Ext.P6 order and therefore the plaint has to be quashed. I feel this Court shall not venture into set aside or quash the plaint in a writ petition but at the same time if the authority before whom it is pending is satisfied that it is a clear abuse of process of Court and that the suit is not maintainable, certainly it can be considered as a preliminary point so that unnecessary hardship to the other side, if any, can be

averted. So in order to facilitate the present writ petitioner to have a decision on the said question I direct him to file an application challenging the maintainability etc. of the suit itself and on service of notice to the other side namely, the plaintiff in the suit, the Court may consider it as a preliminary point and dispose it of in accordance with law. The writ petitioner is permitted to file the application within a period of two weeks from today and the Court shall dispose of the matter within one month from that date. I make it clear that I have only directed to the Court to consider it as a preliminary point and therefore it shall not insist for filing of a written statement for consideration.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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